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MILITARY AUXILIARY VESSEL REVOLVING FUND ACT

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Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

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REPORT

U. S. GOVT. PUBS.
DEPOSITORY 376

[To accompany H.R. 4136]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 4136) to authorize the establishment of a Military Auxiliary Revolving Fund within the Treasury of the United States, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

That this Act may be cited as "The Military Auxiliary Vessel Revolving Fund Act".

SEC. 2. ESTABLISHMENT OF PROGRAM.—The Secretary of the Navy (hereinafter in this Act referred to as the "Secretary") shall carry out a program for the construction and charter of militarily-useful merchant vessels. Under the program, the Secretary shall contract for the construction of vessels that meet the criteria of section 3 of this Act and may charter those vessels in accordance with section 4 of this Act.

SEC. 3. CRITERIA FOR VESSELS TO BE CONSTRUCTED.—

(a) CRITERIA.—The criteria to be used by the Secretary in contracting for construction of a vessel under this Act are as follows:

(1) The vessel must be configured for the military sealift mission and otherwise be militarily useful to the Department of the Navy in time of war or national emergency, as documented by the 1984 Department of Defense Sealift Study or, after two years after enactment, as documented by the report required under section 10.

(2) The military capability that would be provided by the vessel must not otherwise be adequately available for projected wartime needs within the existing United States-flag merchant fleet, as documented by the 1984 Department of Defense Sealift Study or, after two years after enactment, as documented by the report required under section 10.

(3) The vessel must be suitable for use in the foreign trades in peacetime, and, based upon a finding of the Secretary of Transportion, would not unfairly compete with existing U.S.-flag operators.

(4) The vessel must be constructed in a United States shipyard with the major components of the hull and superstructure manufactured in the

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United States and with main propulsion machinery manufactured in the United States, when that machinery is available in the United States.

(5) The shipyard in which the vessel is to be constructed shall be the most efficient in the United States and shall be the most comparable in terms of man-hours of construction and time of delivery to that of a vessel of comparable design built in a representative foreign shipyard.

(6) If after two years of the program the efficiency of the shipyard in which the vessel is to be constructed is not comparable in terms of man-hours of construction and time of delivery to a vessel of comparable design built in a representative foreign shipyard, the shipyard must decrease its differential in efficiency by 10 percent per year for each of the remaining three years of the program in order to remain eligible for a construction contract under this Act.

(b) LIMITED COST-RECOVERY REQUIREMENTS.—The Secretary may not enter into a contract for construction of a vessel under this Act unless the Secretary determines that the charter hire for that vessel amortizes an amount equivalent to the cost of construction of a comparable vessel in a representative foreign shipyard over the economic useful life of the vessel less depreciation.

SEC. 4. USES OF VESSELS CONSTRUCTED.—

(a) AUTHORIZED USES. The Secretary may use a vessel constructed or acquired under the program as follows:

(1) The Secretary may operate the vessel (or contract to have the vessel operated) in direct support of United States military forces unless the Secretary of Transporation determines that the operation would unfairly compete with another U.S.-flag vessel.

(2) The Secretary may charter the vessel to a citizen of the United States who is eligible to document a vessel under 46 U.S.C. 12102 for operation as a United States-flag ship, but only if—

(A) the vessel will be documented under that chapter for operation:

(i) in the foreign trade; or

(ii) in the coastwise or intercoastal trade as a passenger vessel and is not in competition with a U.S.-built passenger vessel that has not been constructed under this Act; and

(B) the Secretary determines that the charter would be in the interest of national security; or

(C) the Secretary determines that the charter would be financially advantageous to the Military Auxiliary Vessel Revolving Fund.

(3) The Secretary may transfer the vessel to the Secretary of Transportation for retention in the National Defense Reserve Fleet.

(b) CONDITION OF CHARTERS.—

(1) The Secretary of Transportation—

(A) shall review the rates for the commercial charter of a vessel under subsection (a) of this section; and

(B) may disapprove the rate if the Secretary of Transportation finds that it is so low as to provide unfair competition to other vessels of the United States operating in the same or similar trades.

(2) Commercial charter of a vessel under subsection (a) of this section may include a provision that the charter may be terminated for national security reasons without cost to the United States.

(3) A citizen who charters a vessel constructed or acquired under this Act is not eligible to receive operating-differential subsidy for the operation of the vessel under title VI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1171-1176).

SEC. 5. DISPOSAL OF VESSELS.—

(a) CONDITIONS FOR DISPOSAL.—The Secretary may dispose of a vessel constructed or acquired under the program at not less than fair market value if—

(1) the vessel is no longer militarily useful; or

(2) disposal of the vessel would be financially advantageous to the Fund.

(b) CONGRESSIONAL NOTICE-AND-WAIT.—A vessel may be disposed of under this section only—

(1) after the Secretary submits to Congress notice of the proposed disposal; and

(2) a period of 30 days of continuous session of Congress [as determined under section 10 U.S.C. 7307(b)(2)] passes after the notice is received.

SEC. 6. ACQUISITION OF VESSELS FOR NATIONAL DEFENSE RESERVE PURPOSES.—From the amounts made available to the Military Auxiliary Revolving Fund, the Secretary of the Navy may expend not more than $75 million for the purchase of militarily-useful tanker vessels that have operating-differential subsidy contracts with

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the United States. The Secretary may not pay more than fair market value for the vessels.

SEC. 7. CONSULTATION WITH THE SECRETARY OF TRANSPORTATION.—In carrying out the program under this Act, the Secretary shall consult with the Secretary of Transportation with respect to—

(1) determinations under section 3 of this Act concerning suitability of a vessel for use in the foreign trades in peacetime (including determinations of capital-cost recovery under subsection (b) of that section and any expression of interest from any citizen of the United States regarding the potential for charter of vessels);

(2) operation of a vessel under section 4 of this Act;

(3) disposal of a vessel under section 5 of this Act; and

(4) any other matters the Secretary considers appropriate.

SEC. 8. MILITARY AUXILIARY VESSEL REVOLVING FUND.—

(a) ESTABLISHMENT OF FUND.—There is in the Treasury of the United States a revolving fund, entitled "The Military Auxiliary Vessel Revolving Fund". Assets of the Fund are available to the Secretary for the purposes of this Act, including the construction and acquisition of vessels under this Act and the maintenance and disposal of vessels. The Secretary may pledge moneys or other assets or income of the Fund as collateral for the sale of securities by the Secretary.

(b) ASSETS OF FUND.—There shall be credited to the Fund the following, which shall constitute the assets of the Fund—

(1) amounts received by the Secretary from the charter of vessels constructed or acquired under the program;

(2) amounts received by the United States from the disposal of vessels constructed or acquired under the program; and

(3) any return on investment of the assets of the Fund.

(c) TERMINATION OF FUND.—If at any time the Secretary determines that the balance in the Fund plus anticipated revenues from charters is insufficient to support maintenance of vessels constructed under the program—

(1) the Fund shall be terminated; and

(2) all charters may be terminated and the vessels constructed under the program transferred to the National Defense Reserve Fleet.

(d) INVESTMENT OF ASSETS OF FUND.—

(1) The Secretary of the Treasury shall invest that portion of the Fund that is not in the judgment of the Secretary of the Navy required to meet current withdrawals. Investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary of the Navy, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to and form a part of the Fund.

(2) The Secretary may, subject to appropriations, issue securities, under those terms and with those maturities as the Secretary may determine, secured by preferred ship mortgage or other assets or income of the Fund, which shall at all times be adequate to insure the timely payment of principal and interest on those securities. Any security issued by the Secretary under this subsection is classified as agency debt and not a public debt transaction of the United States, and is not guaranteed as to payment of principal and interest by the full faith and credit of the United States.

SEC. 9. CONDITIONS ON OPERATION OF PROGRAM.—

(a) OFFICERS TO BE MEMBERS OF NAVAL RESERVE.—A vessel constructed or acquired under the program may not be chartered for operation in commercial service unless the operator agrees that each officer of the vessel shall be a member of the Naval Reserve.

(b) APPLICABLE LAW.—A contract for construction, acquisition, or charter of a vessel under the program shall be entered into in accordance with 10 U.S.C. 137 and other procurement laws and regulations applicable to the Department of the Navy.

(c) CONGRESSIONAL NOTICE-AND-WAIT.—Funds may not be obligated for construction or acquisition of a vessel under this Act until—

(1) the Secretary notifies the House and Senate Appropriations and Armed Services Committees, the House Committee on Merchant Marine and Fisheries, and the Senate Committee on Commerce, Science, and Transportation in writing of the intent to obligate the funds (including the

purpose for which the funds are intended to be obligated and a description of the type of vessels to be constructed or acquired); and

(2) a period of 60 days passes after the notice is received.

SEC. 10. IDENTIFICATION OF MILITARY NEED FOR SEALIFT CAPACITY.—

(a) The Secretary of the Navy, in consultation with the Secretary of Transportation, shall report biannually to the Congress on the Nation's military sealift capacity and the shortfall, if any, between such capacity and the military sealift needs as defined by the contingency plans of the United States Armed Services. The report shall include—

(1) the number and types of nonmilitary United States-flag vessels necessary to meet sealift capacity needs;

(2) the number and types of nonmilitary United States-flag vessels available to help meet sealift needs; and

(3) any shortfall indentified between military sealift needs and available capacity.

(b) The Secretary of the Navy shall file the report with the Armed Services Committees of the House and the Senate, the House Merchant Marine and Fisheries Committee, and the Senate Commerce, Science, and Transportation Committee.

SEC. 11. SUNSET PROVISION.—The Secretary may not enter into a contract for the construction or acquisition of a vessel under this Act after September 30, 1991.

SEC. 12. INITIAL CAPITALIZATION OF FUND.—The program established by this Act shall be considered for purposes of the second proviso of section 8103(b) of the Department of Defense Appropriations Act, 1986 [as contained in section 101(b) of Public Law 99-190] to be a Mariner Fund program for construction and lease of militarily-useful vessels. The amount of $852,100,000 made available in such section only for the Mariner Fund shall be credited to the Military Auxiliary Vessel Revolving Fund established in section 8 of this Act.

SEC. 13. CONFORMING AMENDMENTS.—The Act of June 2, 1951 (46 App. U.S.C. 1241a-c) is amended:

(1) in section 1241a in the first paragraph by striking the word "Transportation." and inserting "Transportation, and construction, charter, and sale under title 10, United States Code."; and

(2) by adding the following new subsection: "1241d. USE OF VESSEL OPERATIONS REVOLVING FUND FOR MERCHANT VESSEL CONSTRUCTION.—When the Secretary constructs, charters, or sells a vessel under title 10, United States Code, the Secretary may perform the functions that are necessary to carry out the purposes of that title—including the assessment of vessel type for commercial suitability; commercial vessel design evaluation and approval; determination of commercial impact of incorporation of sealift enhancement or national defense features; and vessel construction, charter, or sales contract evaluation, award, and supervision. Amounts authorized to carry out the purposes of the Military Auxiliary Vessel Revolving Fund may be transferred to the Fund for this purpose.".

PURPOSE OF THE BILL

The purpose of the bill is to authorize the establishment of the Military Auxiliary Vessel Revolving Fund ("Fund") within the Treasury of the United States to finance the construction of militarily-useful commercial vessels in domestic shipyards for operation under U.S. registry by citizens of the United States in foreign trade.

The bill discharges the requirement contained in section 8103(b) of House Joint Resolution 465, the Fiscal Year 1986 Continuing Spending Resolution, (Public Law 99-190) for enactment of authorizing legislation prior to the obligation by the Secretary of the Navy of $852,100,000. This money was set aside for initial capitalization of a Mariner Revolving Fund for merchant ship construction to augment sealift mobility.

BACKGROUND AND NEED FOR THE LEGISLATION

Commercial build-and-charter authority has been included in several maritime laws enacted since the Shipping Act, 1916, and employed by each institutional predecessor of the current Maritime Adminstration (MARAD) as the principal means of construction of commercial shipping for wartime use. That authority was exercised by the newly appointed Shipping Board in 1917 to construct the government-owned merchant fleet necessary to transport American Expeditionary Forces to the European front.

Permanent authority for undertaking a commercial build-and-charter program is codified in title VII of the Merchant Marine Act, 1936 (46 App. U.S.C. 1191–1206). Title VII authority was first exercised in 1938 by the newly established United States Maritime Commission at the direction of President Franklin D. Roosevelt. This resulted in the construction of the first T–2 tankers and, later, Liberty ships (prior to U.S. entry into World War II), which proved invaluable to the successful outcome of that conflict. Today, that authority is delegated to the Secretary of Transpotation.

The build-and-charter program contained in H.R. 4136 is modeled after the highly successful 1951 Mariner Program in which the Federal Government financed the construction of 35 modern, standard design, dry cargo vessels in seven shipyards. The vessels were leased to commercial operators at the height of the Korean War on long-term charter. Tyey operated initially in logistical support of the war effort and later in commercial service. Twenty-nine of the vessels were eventually sold at a profit to private operators, five were retained by the predecessor of the Navy's Military Sealift Command (MSC), and one vessel was sunk.

In the modern era, the Military Sealift Command has relied upon build-and-charter as a method of procuring transportation services beginning with the nine-vessel Sealift Tanker Program in 1971. That program was designed and implemented to meet MSC's petroleum product transport requirements. It was structured around commercial construction and financing with credit support provided by long-term Government charter arrangements.

The Committee on Merchant Marine and Fisheries has consistently—expressed concern about the lack of adequate sealift capacity—a critical element of national contingency planning. This criticism is best exemplified by the Committee's 1980 White Paper Report on the Strategic Implications of the Omnibus Martitime Bill (No. 96–E), which first challenged conventional wisdom concerning the adequacy of sealift capacity in relation to the ability to execute national contingency planning.

By any objective measure, the constant trend of decline of the U.S.-flag merchant marine since World War II has accelerated, As of January 1, 1986, the fleet numbered 597 vessels of over 1,000 gross tons with a carrying capacity of 24 million tons, including 477 oceangoing and 120 Great Lakes vessels. In the last year alone, fleet attrition representing depressed economic conditions in the ocean shipping sector has claimed 34 vessels displacing 2.9 million tons. For the first time in our Nation's history, the United States Navy lists more capital ships in commission than are currently in the active merchant marine.

However, the more critical trend is in the accelerated decline of military-useful vessels in the commercial fleet. This trend reflects the growing dichotomy between both commercially-competitive and militarily-useful vessels. The number of militarily-useful dry cargo vessels is projected to decline from nearly 600, displacing 12 million deadweight tons, in 1970 to less than 200 vessels of only 4 million deadweight tons by 1990. This translates into a projected shortfall of approximately 700,000 to 800,000 deadweight tons of shipping capacity able to carry military equipment during surge operations in the Southwest Asia portion of a global war. This is between 10–25 percent of the present U.S.-flag general cargo fleet currently operating in foreign trade. (See Department of Defense Sealift Study 1984.)

A recent National Research Council report, prepared at the request for the Department of Energy, postulates a similar shortage of U.S.-flag tankers to transport Strategic Petroleum Reserve crude oil between the Reserve and U.S. ports in an emergency with increased reliance upon foreign-flag tankers operating under waivers in cabotage trade in the 1990–2000 timeframe. (See "The Logistics of the U.S. Strategic Petroleum Reserve in the World Petroleum Market; 1990–2000", National Research Council, 1985).

In terms of militarily-useful product tankers (those generally under 90,000 deadweight tons of Panamax dimensions), the projected rate of decline and resulting shortfall is even more severe. The projection is for a decline from a 1970 level of nearly 300 tankers of 6 million deadweight tons to little more than 100 vessels of 3 million deadweight tons by 1990. This represents a shortfall of 75 "handy-sized" product tankers or about three-quarters of the number considered necessary by the Navy to meet anticipated mobilization requirements.

At the same time, the number of American-owned vessels operating under foreign flags has declined by 47 vessels, displacing 4.5 million tons, to 438 vessels totaling 43.2 million deadweight tons. Of this total, those in the Effective U.S.-Controlled (EUSC) fleet also continue to decline at a similar rate; i.e., those registered under the Liberian, Panamanian, or Honduran flag with over 50 percent U.S. ownership, and either covered by MARAD-issued war risk insurance or subject to contractual control as condition of transfer to foreign registry. However, MARAD has recently determined the defense utility of the majority of those vessels, mostly tankers and dry-bulk carriers, to be primarily of a nonessential nature to meet economic support shipping requirements in foreign trade in time of war or national emergency. (See "Economic Support Shipping", Maritime Adminstration, Department of Transportation, April 1985)

Contemporaneously, the Department of Defense (DOD) Sealift Study determined that, of the 389 vessels in the EUSC fleet, only 18 dry cargo vessels and 54 product tankers are militarily useful. With the decline in overall numbers and composition of the EUSC fleet, the militarily-useful component of the fleet is projected to decline to 12 dry cargo and 42 tankers by 1992.

If the rate of attrition in U.S.-owned and registered shipping is of concern, the downward cycle of North Atlantic Treaty Organization (NATO) and Organization for Economic Cooperation and De-

velopment (OECD) member registries is even more alarming. The principal relevance of this to U.S. sealift posture is the assumption that our NATO allies will provide 500 dry cargo ships in the event of a war in Western Europe. Paradoxically, there is apparently no similar commitment to provide tankers in support of such a resupply effort.

Between 1970 and 1982, the United Kingdom's (U.K.) share of the world merchant fleet declined by 50 percent and shrank in tonnage by more than two-thirds from 50 million to 16 million deadweight tons. The U.K.-owned and -registered fleet of ships over 500 gross tons has declined from 1,614 vessels in 1975 to what may be as few as 400 vessels by the end of 1986 if present trends continue. Between 1982–84, the U.K. tanker fleet was reduced by 18 percent, and breakbulk/general cargo ships by 26 percent. If present trends continue, the fleet may shrink to as little as 5 million deadweight tons by 1995.

Similar conditions pervade European Economic Community (EEC) and non-EEC member nations of Western Europe alike. The Norwegian registry has lost 87 vessels displacing 10 million tons (40 percent of its tonnage) through selling and flaging-out in thirteen months, and could lose another 10 million tons in 1986. The Greek flag lost 421 ships of 3.83 million gross registered tons in 1985; it has been losing a ship per day overall since 1981. The West German fleet has lost between 500-800,000 tons annually over the last several years. The French oil tanker fleet declined by 50 percent in tonnage in 1985 alone. Similar trends are reported among the fleets of Italy, Portugal, and Spain, with the Spanish fleet suffering a net 15 percent decline between 1980–83. Sweden lost 36 percent of its tanker fleet in 1985 alone, with overall tonnage falling to a 25-year low, shrinking by 70 percent since 1976. The Danish commercial fleet has likwise declined by 40 percent from 1,000 to under 600 vessels in the last decade, with another sixth or 100 vessels up for sale. The Swiss and Finnish fleets report proportionate declines.

The implications of these trends—if not arrested both for the collective security of NATO and for the execution of U.S./NATO contingency planning—are alarming. In the aggregate, continuation of current trends portend a decrease in militarily-useful dry cargo vessels between 1970–1990 from nearly 4,200 vessels, displacing 35 million deadweight tons, to approximately 2,400 vessels of less than 24 million tons. Similar conditions obtain in the NATO tanker fleet with projected losses of from 1,400 vessels, displacing 44 million deadweight tons, to less than 900 vessels of 23 million tons.

Sealift mobility shortfalls have been identified in a series of studies quantifying sealift requirements in global and Southwest Asia scenarios: Department of Defense—the Congressionally-mandated Mobility Study, the Sealift Study, the Shipyard Mobilization Base (SYMBA) Study, the National Defense Shipyard (NADES) Study and the Sealift Tanker Study; and the Maritime Administration's Economic Support Shipping Study.

These studies postulated a requirement in the first five months of either a Southwest Asia contingency or the Southwest Asia portion of a global conflict. The studies cited a need for 5 million deadweight tons of shipping capable of lifting approximately one mil-

lion tons of equipment and an additional 3.3 million tons of shipping to be available for sustaining the operations. These estimates of anticipated sealift capacity reveal a shortfall between 10 percent (marginally inadequate) and 25 percent in dry cargo capacity, as well as a net shortfall in petroleum, oil, and liquids (POL) capacity on the order of 75 clean product petroleum tankers.

A graphic illustration of the impact of sealift capacity shortfalls upon defense planning occurred in the context of a Joint Chiefs of Staff (JCS)-conducted global wargame, "Pressure Point 84". In the exercise, a shortage of sealift capacity caused a backlog of critical supplies in West Coast ports on the order of 500,000 tons. The result was that those supplies reached the "war" 11 days late, leaving Marine and Army units vulnerable.

Overall defense planning calls for increasing sealift capacity from 3.1 million tons in 1981 to 4.6 million tons by 1996. This is necessary to meet the JCS requirements to deploy a 17,000-man Marine Assault Follow-On Echelon with sixty days of supplies, and to supplement and sustain the 6 additional Army divisions and 60 Air Force fighter squadrons slated for NATO deployment. Personnel would be transported by military airlift.

In response to this documented shortfall, Congress has designated $5.4 billion for strategic sealift in fiscal years 1982–89—or more than in the entire period since World War II. In addition to these amounts for new ship construction and conversion, approximately $13.4 billion has been designated for operations and maintenance of sealift vessels for the Navy for the same period.

This forward force manned by civilian contract crews includes an interim force of 18 near-term prepositioning ships, to be replaced with a combination of 13 new construction and conversion maritime prepositioning ships (TAKX); 8 fast sealift ships (TAKRX); 12 auxiliary crans ships; 2 hospital ship conversions (TAH); and 2 aviation support ships (TAVB). These procurement programs are substantially complete.

At the same time, the Navy has embarked on a dramatic expansion of reserve sealift capacity through the acquisition of merchant vessels for retention in the Ready Reserve Force (RRF), a component of the National Defense Reserve Fleet (NDRF). Altogether, the Navy will acquire a minimum of 119 vessels by 1991 at a cost of over a half billion dollars at an average acquisition cost of $20 million and annual maintenance expenses of $1 million per vessel.

The necessity for these drastic remedial measures arises from a confluence of factors. These include a decline in the EUSC fleet and the NATO registries—the result of increased rates of vessel scrapping and reflagging to flag-of-convenience registries; the most severe global recession and depressed freight rates for ocean transportation in fifty years; dramatically altered patterns of seaborne movements prompted by an overall restructuring of international trade; and technological advancements in intermodal transportation. The significance of these events is that defense contingency planning can no longer assume the availability of adequate numbers of available vessels from U.S. and NATO inventories to meet critical sealift requirements. The Chief of Naval Operations has said repeatedly that without adequate sealift not a single national contingency plan is executable. Build-and-charter legislation was

designed to fill the growing void identified between requirements and capabilities.

General Discussion

The genesis of H.R. 4136 and related bills flows from a number of factors. These include the recognition of the magnitude and significance of the aforementioned sealift mobility problem, and the related concern about the potential irreversible loss of commercial shipbuilding capability in the United States.

In 1985, Congress set aside $852,100,000 (representing a portion of the accumulated savings in naval ship construction) in House Joint Resolution 465, the Fiscal Year 1986 Continuing Spending Resolution (Public Law 99-190). This money was set aside for deposit in a revolving Mariner Fund for the construction and lease of cargo vessels configured for the military sealift mission. Obligation of this money was specifically conditioned on the enactment of necessary authorizing legislation establishing a revolning fund and conferring program authority on the Secretary of the Navy.

The Committee considered three bills: H.R. 3798 (Mr. McKernan), H.R. 4136 (Mr. Biaggi), and H.R. 4146 (Mr. Jones). Two primary issues dominated the Committee's consideration of build-and-charter legislation. The first concerned the need to imrove the legislation as introduced in order to construct the maximum number of vessels and insure maximum return to the Fund without the need for subsequent appropriations to support an ongoing program.

The other issue of concern to the Committee was to structure the program in a manner than assured a role for the Maritime Administration in view of that agency's considerable expertise and institutional knowledge of the maritime industry. The need to create a substantive role for the Maritime Administration in the implementation of the program was prompted by three considerations.

The Committee desired to emphasize the commercial aspect of the build-and-charter program, as contrasted with the recently concluded Navy build-and-charter programs involving the new construction and conversion of essentially dedicated sealift vessels operated under contract to the Navy. In this context, the Committee emphasizes that, while the Secretary of the Navy may use the Fund to construct commercial vessels for operation in direct support of military forces, the primary thrust of the program is to construct truly dual-use vessels capable of competitively operating in commercial trades in peacetime. This requires the active participation of the principal civilian maritime agency in the Federal Government in the program.

The second consideration is that, by tradition, the Maritime Administration and its institutional predecessors have carried out every commercial vessel construction program undertaken by the Federal Government since the First World War.

The third consideration is the legitimate desire to avoid the creation of a redundant capability in Government to perform many of the necessary functions associated with this program. While the primary responsibility for policy direction and implementation of the program lies with the Secretary of the Navy, the Maritime Administration is authorized to and fully capable of performing spe-

cific functions in the nature of a general agent at the request of the Secretary.

Among those functions are: assessment of vessel type for commercial suitability; determination of overall project economic viability and independent market analysis; commercial vessel design evaluation and approval; determination of commercial impact of incorporation of national defense and sealift enhancement features; vessel construction, charter, or sales contract evaluation, award, and supervision; and vessel disposal or retention in the National Defense Reserve Fleet. The Committee recognizes the MARAD has ample legal authority to carry out these functions through interagency agreement and transfer of resources to the Vessel Operations Revolving Fund under the Economy Act of 1932 (31 App. U.S.C. 1535).

Committee Action

The Subcommittee on Merchant Marine held a hearing on H.R. 4136 and related bills on March 11, 1986. Among the witnesses appearing at the hearing were representatives of the Department of the Navy; the Maritime Administration; Department of Labor of the Commonwealth of Massachusetts; TransTech Marine Company; Ocean Shipholdings, Inc.; American Institute of Merchant Shipping; Puerto Rico Marine Management, Inc.; Central Gulf Lines, Inc.; the American Ship Building Company; Shipbuilders Council of America; and Bath Iron Works Corporation.

In addition, testimony was received for the record from: Prudential Lines, Inc.; American Trading Transportation Company, Inc.; National Marine Engineers' Beneficial Association; Autoliners Incorporated; Automar International Car Carriers, Inc.; Lykes Bros. Steamship Company, Inc.; Moore McCormack Resources, Inc./ Moore McCormack Bulk Transport, Inc.; Matson Navigation Company, Inc.; International Organization of Masters, Mates, and Pilots; Sea-Land Corporation; and the Metal Trades Department, AFL–CIO.

With the exception of the Administration, support in concept for the legislation was universal.

The Subcommittee on Merchant Marine met in markup session on April 10, 1986 to consider H.R. 4136. After general discussion reflecting broad support for the legislation, an amendment in the nature of a substitute was offered. Following the adoption of two amendments in the second degree, the substitute was adopted and ordered reported by unanimous voice vote.

On June 4, 1986, the Committee on Merchant Marine and Fisheries met in markup session to consider H.R. 4136, as amended by the Merchant Marine Subcommittee. An amendment in the nature of a substitute was offered by Subcommittee Chairman Mario Biaggi. The purpose was to facilitate agreement on a common version between the Committees to which the legislation was jointly referred in order to permit its expedited consideration by the Full House.

The Committee adopted the substitute amendment to the bill as amended by the Subcommittee, with two additional amendments.

One amendment would permit the Secretary to charter a passenger vessel to a citizen of the United States for operation in the coastwise trade if the vessel does not compete with a standard-size U.S.-built cruise vessel not constructed under the Act.

The other amendment would limit the authority of the Secretary of the Navy to acquire existing vessels financed through the revolving fund for national defense reserve purposes to subsidized tankers at no more than fair market value subject to the same authorized overall ceiling of $75 million.

The Committee, by unanimous voice vote, then agreed to order H.R. 4136, as amended, reported to the House.

Section-by-Section Analysis

Section 1: Short Title

This section establishes the title of the bill as the "Military Auxiliary Vessel Revolving Fund Act".

Section 2: Establishment of Program

This section confers basic program authority on the Secretary of the Navy to implement a commercial build-and-charter program.

Section 3: Criteria for Vessels to be Constructed

This section establishes basic criteria to be applied by the Secretary of the Navy in the construction of merchant vessels under a commercial build-and-charter program.

Under this criteria, a vessel must be configured for the military sealift mission and militarily-useful in time of war or national emergency with reference to specific mobilization requirements contained in the DOD Sealift Study. The vessel must be militarily and commercially useful. The military capability provided by the vessel must not otherwise be available in the existing U.S. merchant fleet. The Secretary of Transportation would determine the suitability for operation in foreign trade in peacetime without engaging in unfair competition with other U.S.-flag vessels. A vessel must be constructed in a domestic shipyard with major portions of the hull and superstructure manufactured in the United States. The main propulsion machinery is required to be purchased from domestic sources, if available. Finally, each vessel is to be constructed in the most efficient domestic shipyard as determined with reference to objective standards of performance in comparison to representative foreign shipyards. If, after two years, a shipyard has not increased its efficiency, it would be precluded from bidding on additional construction contracts.

Subsection (b) provides that the Secretary may not enter into a construction contract unless the Secretary determines that the charter will result in some limited cost recover.

Section 4: Use of Vessels Constructed

The Secretary may operate a vessel (or contract to have a vessel operated) in direct logistical support of military forces unless the vessel would unfairly compete with another U.S.-flag vessel. Vessels may be commercially chartered or transferred to the National

Defense Reserve Fleet maintained by the Secretary of Transportation.

In the case of a commercial charter, some trading restrictions apply. The vessel is restricted to operation in U.S. foreign or foreign-to-foreign trade. The Secretary must find that the charter is in the interest of national security and is financially advantageous to the revolving fund. As in the case of earlier Navy build-and-charter programs, any citizen eligible to document a vessel under U.S. registry is eligible to charter a vessel from the Secretary.

The Secretary of Transportation is directed to review commercial charter rates and to disapprove them if it is found that the rates promote unfair competition with other U.S.-flag vessels operating in the same or similar trade.

Section 5: Disposal of Vessels

The Secretary may dispose of a vessel constructed or acquired under the program other than through charter or transfer to the Ready Reserve Force under certain conditions. If sold for commercial use and operation or for scrap, the vessel must be sold for fair market value. The vessel must either be determined to be no longer militarily useful or the sale must be financially advantageous to the Fund. Any sale of a U.S.-flag vessel involving transfer of registry requires approval of the Secretary of Transportation under the Shipping Act of 1916. Sale of a vessel for scrap would involve transfer to the Secretary of Transportation under the Secretary's trade-in authority, using the Vessel Operations Revolving Fund under section 510 of the Merchant Marine Act, 1936. Disposition by any means must be preceded by notice to the cognizant Committees of the Congress followed by an elapsed period of thirty legislative days.

Section 6: Acquisition of Vessels for National Defense Reserve Purposes

This section authorizes the Secretary to expend up to $75 million from the Fund for the acquisition of existing tanker vessels that have operating-differential subsidy contracts at fair market value for retention in the National Defense Reserve Fleet.

Section 7: Consultation with the Secretary of Transportation

This section requires the Secretary of the Navy to consult with the Secretary of Transportation at appropriate instances in the implementation of the commercial build-and-charter program. These include: determinations of project economic viability and commercial suitability of candidate vessels; commercial shipyard productivity evaluation and cost comparison between domestic and foreign construction; vessel charter hire and sales price evaluation, market comparison, and financial analysis in relation to Fund investment and administration; vessel transfer and disposition; and other commercial aspects of program administration.

Section 8: Military Auxiliary Vessel Revolving Fund

This section establishes the Military Auxiliary Vessel Revolving Fund as a public enterprise revolving fund in the U.S. Treasury.

The Fund may be used for the construction, acquisition, maintenance, and disposal of vessels under the Act.

The Fund is initially capitalized from direct appropriations. Sources of income to the Fund include charter hire, proceeds from the sale or disposal of vessels, and return on investment of the Fund balance.

The Fund terminates when there are insufficient funds to maintain vessels constructed under the program. When this occurs, the Fund would be liquidated, charters assigned or terminated, and vessels transferred to the Secretary of Transportation for retention in the National Defense Reserve Fleet.

The balance of the Fund—at any one time not committed to the construction or ownership of commercial shipping assets—may be invested by the Secretary in Treasury or government-guaranteed securities with the income from those investments credited to the Fund. The Secretary may, in connection with the construction and charter or sale of vessels, pledge the Fund assets, income, and preferred ship mortgages held as security for the sale of collateralized mortgage obligations. Those securities are issued subject to appropriations, represent agency not public debt transactions of the United States, are secured only by the Fund itself, and are not guaranteed as to payment of principal and interest by the full faith and credit of the United States.

Section 9: Conditions on Operation of Program

This section contains miscellaneous conditions and qualifications applicable to program operation. These include a requirement that officers on vessels constructed and chartered under the program be members of the Naval Reserve, applicability of DOD procurement law unless otherwise specified, and Congressional prenotification prior to obligation of amounts for vessel construction and acquisition.

Section 10: Identification of Military Need for Sealift Capacity

This section imposes a continuing requirement on the Secretary of the Navy for a biannual report on strategic sealift capacity based on current and projected surge mobilization requirements. The report must specify requirements by vessel numbers and type, identify all U.S.-flag sources of available sealift capacity to meet those requirements, and quantify short-falls in sealift capacity. It is to be transmitted to the cognizant Committee of the Congress.

Section 11: Sunset Provision

This section contains a sunset provision suspending authority for new vessel construction or acquisition after September 30, 1991.

Section 12: Initial Capitalization of Fund

This section designates the Military Auxiliary Vessel Revolving Fund as the equivalent Mariner Fund identified in the Fiscal Year 1986 Continuing Spending Resolution as the depository of $852,100,000 in unobligated amounts for the construction and charter of military-useful vessels subject to the enactment of corresponding authorizing legislation.

Section 13: Conforming Amendments

This section contains conforming amendments to 46 App. U.S.C. 1241a–c. These amendments authorize the Secretary of Transportation to utilize the Vessel Operations Revolving Fund (established in 1951 to implement the original Mariner Program) for the purpose of executing those functions delegated to the Secretary by the Secretary of Transportation through interagency agreement in the implementation of a commercial build-and-charter program subject to the application of the Economy Act of 1932 (31 App. U.S.C. 1535).

Cost of the Legislation

Clause 7(a) of Rule XIII of the Rules of the House of Representatives requires a statement of the estimated costs to the United States that would be incurred in carrying out H.R. 4136, as amended, in fiscal year 1986, and each of the following five years. However, under paragraph (d) of clause 7, the provisions of (a) do not apply when the Committee has received a timely report from the Congressional Budget Office.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 4136, as amended, would have no significant inflationary impact upon prices and costs in the national economy.

The enactment of the bill will result in the construction of a modest number of new commercial vessels in domestic shipyards for operation under U.S. registry in foreign trade. The economic impact of enactment of the legislation should result in:

(1) increased employment in economically depressed areas and economic sectors, such as seagoing labor;

(2) increased share of U.S. international seaborne trade transported in U.S.-flag vessels and, therefore, and increased share of international service trade with net positive effect upon our international balance of payments; and

(3) reduction in existing and anticipated level of expenditures for defense sealift capacity through alternative means.

Compliance With Clause 2(l)(3) of Rule XI

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives:

(A) No oversight hearings were held on the subject of this legislation.

(B) The requirements of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation since it does not provide new budget authority or new or increased tax expenditures.

(C) The Committee has received no report from the Committee on Government Operations of oversight findings and recommendations arrived at, pursuant to clause 4(c)(2) of rule X of the Rules of the House of Representatives.

(D) The Director of the Congressional Budget Office has furnished the Committee with an estimate and comparison of

costs for H.R. 4136 pursuant to section 403 of the Congressional Budget Act of 1974. The submission is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 31, 1986.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4136, the Military Auxiliary Vessel Revolving Fund Act, as ordered reported by the House Committee on Merchant Marine and Fisheries, June 4, 1986. We estimate that enactment of this bill would result in no costs to the federal government or to state of local governments.

H.R. 4136 authorizes the Secretary of the Navy to carry out a program for the construction and charter of militarily useful merchant vessels. To finance construction and acquisition of vessels, H.R. 4136 establishes a revolving fund, to be known as the Military Auxiliary Vessel Revolving Fund. The bill provides for initial capitalization of this fund in the amount of $852 million from funds made available for this purpose, from prior year unobligated balances, by the Department of Defense Appropriations Act of 1986 (contained in Public Law 99-190).

After enactment of Public Law 99-190, the Urgent Supplemental Appropriations bill for 1986 (Public Law 99-349) prohibited this use of the funds provided by the earlier act. Under current law, therefore, no funds are available to capitalize the Military Auxiliary Vessel Revolving Fund. Because all the costs associated with this bill would be financed from the Revolving Fund, enactment of this bill would not result in any federal government expenditures.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER, *Director.*

DEPARTMENTAL VIEWS

Included herewith are letters from the Office of Management and Budget and the Department of the Navy, dated April 10, and May 8, 1986, respectively.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, April 10, 1986.

Hon. MARIO BIAGGI,
Chairman, Subcommittee on Merchant Marine, Committee on Merchant Marine, and Fisheries, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: As the House Merchant Marine Subcommittee prepares to mark up H.R. 4136, I would like to review with you the reasons for the Administration's strong opposition to the build-and-charter program that it would authorize.

While we share a mutual goal of maintaining a U.S. merchant marine and shipbuilding industry adequate to meet national defense requirements, we do not agree that build-and-charter is the correct approach to achieve that goal. Regarding promotion of the U.S. merchant marine, the Administration continues to believe that the appropriate approach is the enactment of legislation that would make U.S.-flag vessels built in foreign yards eligible to receive operating subsidies and to carry preference cargo immediately.

Regarding the U.S. shipbuilding industry, the Administration sees no rationale for any Government action at this time. As the July 1985 Special Report of the National Advisory Committee on Oceans and Atmosphere aptly states:

> The United States now has a very large shipbuilding capacity, and the yards expected to survive the current decline will still have sufficient surge capacity to satisfy wartime needs as defined by currrent defense scenarios.
>
> Most recent proposals to aid the U.S. shipbuilding industry—such as a federally funded merchant shipbuilding program, renewed construction subsidies, a federally backed maritime bank, and expanded cargo preference — are too small in scope to be of significant impact or would create large problems.

In addition, the Administration believes that build-and-charter is not the most cost-effective method of procuring sealift capability needed in time of national emergency. Instead, we believe that the existing program of acquiring militarily useful, surplus commercial vessels for the Ready Reserve Force is the most appropriate method for meeting national defense sealift requirements.

For the above reasons, I would not be able to recommed approval if build-and-charter legislation were presented for the President's action.

Sincerely yours,

JAMES C. MILLER III,
Director.

DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, May 8, 1986.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Your request for comments on H.R. 3798, 99th Congress, a bill, "To authorize the establishment of a Merchant Ship Revolving Fund, and for other purposes"; and H.R. 4136, and H.R. 4146, 99th Congress, bills, "To authorize the establishment of a Military Auxiliary Revolving Fund within the Treasury of the United States, and for other purposes", have been assigned to this Department by the Secretary of Defense for the preparation of a report expressing the views of the Department of Defense.

These bills are designed to create a revolving fund to be used to build militarily useful merchant ships and then charter or sell those ships to private operators for use in commercial trades. The Department of the Navy, on behalf of the Department of Defense, opposes this legislation.

The Navy's principal program for increasing our defense sealift capability involves procurement of existing militarily useful ships that have become surplus to commercial requirements. Such ships, placed in the Ready Reserve Force, can then be activated for use in emergencies.

We also believe that many types of vessels constructed under a build and charter program would not be commercially viable unless the charter rate or the sale price were extremely low—too low to permit recovery of the government's investment over the life of the ship. This would mean that the revolving fund could not be replenished from the proceeds of charters or sales. Long-term viability of the program would require continuing annual appropriations by the Congress.

While we remain in accord with the goal of a strong, healthy merchant marine and shipbuilding industry, we do not believe that this proposed build and charter legislation will accomplish that goal.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense. The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report of the above bills.

For the Secretary of the Navy.

Sincerely,

WILLIAM D. COHEN,
Captain, JAGC, U.S. Navy, Director, Legislation.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE ACT OF JUNE 2, 1951 (95 STAT. 165)

(46 App. U.S.C. 1241a–c)

§ 1241a. Vessel operations revolving fund; establishment; uses; limitation

There is established a working capital of $20,000,000 to remain available until expended, for the "Vessel Operations Revolving Fund", which is created for the purpose of carrying out vessel operating functions of the Secretary of Transportation, including charter, operation, maintenance, repair, reconditioning, and betterment of merchant vessels under the jurisdiction of the Secretary of Transportation[.], *and construction, charter, and sale under title 10, United States Code.*

Notwithstanding any other provision of law, rates for shipping services rendered under said Fund shall be prescribed by the Secretary of Transportation and the Fund shall be credited with all receipts from vessel operating activities conducted thereunder: *Provided,* That the provisions of sections 1291(a), (c), 1293(c), and 1294 of Appendix to title 50 shall be applicable in connection with such operations and to seamen employed through general agents as employees of the United States, who may be employed in accordance with customary commercial practices in the maritime industry, notwithstanding the provisions of any law applicable in terms to the employment of persons by the United States: *Provided further,* That such sums as may be determined to be necessary by the Secretary of Transportation, with the approval of the Office of Management and Budget, but not exceeding 2 per centum of vessel operating expenses, may be advanced from this Fund to the appropriation "Salaries and expenses" for the purposes of that appropriation in connection with vessel operating functions, but without regard to the limitations on amounts as stated therein: *Provided further,* That notwithstanding any other provisions of law, the unexpended balances of any working funds or of allocation accounts established, subsequent to January 1, 1951, for the activities provided for under this appropriation, together with receipts heretofore and hereafter received from such activities, may be transferred to and consolidated with this Fund, which shall be available for the purposes of such working funds or allocation accounts.

No money made available to the Department of Transportation, for Maritime Activities, by this section or any other Act shall be used in payment for a vessel the title to which is acquired by the Government either by requisition or purchase, or the use of which is taken either by requisition or agreement, or which is insured by the Government and lost while so insured, unless the price or hire to be paid therefor, (except in cases where section 1212 of this Appendix is applicable) is computed in accordance with subsection (a) of section 1242 of this Appendix, as that subsection is interpreted by the General Accounting Office.

§ 1241d. Use of vessel operations revolving fund for merchant vessel construction

When the Secretary constructs, charters, or sells a vessel under title 10, United States Code, the Secretary may perform the functions that are necessary to carry out the purposes of that title including the assessment of vessel type for commercial suitability, commercial vessel design evaluation and approval, determination of commercial impact of incorporation of sealift enhancement or national defense features, and vessel construction, charter, or sales contract evaluation, award, and supervision. Amounts authorized to carry out the purposes of the Military Auxiliary Vessel Revolving Fund may be transferred to the Fund for this purpose.

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